IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO.104 OF 2004
IN
SUIT NO.937 OF 1981

Dr.Narayan Kisanlal Malpani
& Ors. .. Plaintiffs

Vs.

M/s.Jamshedji Rustomji Devidas
& Jani & Merchants .. Defendants

Mr.S.Shah i/b R.R.Nagda for the plaintiffs

F.E.D'Vitre Sr.Counsel with M.S. Doctor
i/b Federal & Laxmikant for the defendants

CORAM : S.U.KAMDAR, J

DATED : 6TH APRIL 2005

P.C.:

1. The present Chamber Summons is taken out to bring on record the legal heirs of plaintiffs no.6 and 13 on record and for setting aside abatement. Defendant no.6 and 13 died on 3.7.1993 and 5.8.1994 respectively. Though there is a substantial delay the same can be compensated with payment of cost as held in the Judgment of the Apex Court in the case of Mithailal Dalsangar Singh and others Vs. Annabai Devram Kini and Others reported in AIR 2003 SUPREME COURT 4244 in para 9 as under:

> "9. The Courts have to adopt a justice oriented approach dictated by the upper most consideration that ordinarily a litigant ought not to be denied an opportunity of having a lis determined on merits unless he has, by gross negligence, deliberate inaction or something akin to misconduct, disentitled himself from seeking the indulgence of the Court. The opinion of the trial Judge allowing a prayer for setting aside abatement and his finding on the question of availability of 'sufficient cause' within the meaning of sub rule (1) of Rule (9) of Order 22 and of Section 5 of the Indian Limitation Act 19063 deserves to be given weight, and once arrived at would not normally be interfered with by superior jurisdiction."

2. In so far that the contention that the claim being personal in nature and does not behold any legal heirs of the deceased plaintiff the issue is kept open at the hearing of the suit. Chamber Summons is disposed of accordingly. No order as to costs.